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REMARKS

Applicant wishes to thank Examiner Smith for the courtesies extended by the Examiner in the telephonic interview on December 21, 2006 with Rebecca Ball, Applicant's undersigned attorney, Jill Powlick, Esq., and David Eyre, the inventor for the above-captioned application. Proposed amendments to claim 18 were discussed. An agreement was not reached with respect to allowance of the claims because the Examiner will update her search, but the Examiner indicated that the proposed amendments appear to overcome the rejections of record.

Claim 25 has been canceled without prejudice. Claim 18 has been amended to require that the processor is programmed "to determine whether the sample is indeterminate for the presence of the nucleic acid." Claim 18 has also been amended to delete the word "using" and the phrase "to use" and to clarify the data manipulations intended by the uses of algorithms and fluorescent values as requested by the Examiner. Support for the amendments made to claim 18 is found, for example, on page 11, lines 21-23, page 13, line 22 through page 14, line 31, and page 20, lines 4-31 of the specification. Minor amendments have been made to claims 20 and 21. Claim 26 has been added. New claim 26 contains subject matter of previous claim 18.

Rejection of Claims 18-23 and 25 under 35 U.S.C. § 112, ¶ 2

The Examiner has rejected claims 18-23 and 25 under 35 U.S.C. § 112, ¶ 2 as being indefinite. The Examiner indicates that the word "using" and the phrase "to use" are vague and indefinite. Claim 25 has been canceled without prejudice. As discussed in the December 21, 2006 telephonic interview, claim 18, and its dependent claims 19-23 have been amended to clarify the data manipulations intended by the uses of algorithms and fluorescent values as requested by the Examiner. Support for the amendments made to claim 18 is found,